Before the DOCKET FILE COPY ORIGINAL
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Federal State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Forward-Looking Mechanism	)	
For High Cost Support	)	CC Docket No. 97-160
	)	

DA 98-848

COMMENTS OF THE
TENNESSEE REGULATORY AUTHORITY

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May 22, 1998

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Forward-Looking Mechanism For High Cost Support	)	CC Docket No. 97-160

DA 98-848

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TENNESSEE REGULATORY AUTHORITY

The Tennessee Regulatory Authority (TRA) respectfully submits the following comments in response to the FCC's Public Notice (DA 98-848) of May 8, 1998, "Common Carrier Bureau Requests Further Comment on Selected Issues Regarding the Forward-Looking Economic Cost Mechanism for Universal Service Support" (Public Notice). In its intrastate universal service proceeding (Universal Service Generic Contested Case, Docket No. 97-00888), the TRA recently issued its attached Interim Order on Phase I (Order) concerning guidelines for the cost and revenue benchmark calculations in Phase II [1/], and the consideration of rate re-balancing in Phase III. The Comments below address only those issues resolved by the TRA in this Order.

[1/] Hearings in Phase II were completed in April 1998. Post-hearing briefs are to be filed on May 22, 1998, followed by proposed Findings of Fact and Conclusions of Law on May 29, 1998.

The Order addresses issues pertinent to section B of the Public Notice, "Revenues to be Included and Level of the Revenue Benchmark." In regard to the separate benchmarks for residential and business services referenced in the Public Notice, however, the TRA finds that intrastate universal service support will be provided only on primary residential lines, and not on business lines, pursuant to state law. [2]/ The comments below, then, technically only apply to the residential benchmark.

Specifically, the TRA finds, and recommends to the FCC, the following: 1) The revenue benchmark should include the revenues from: basic local service, intrastate toll, directory assistance, all vertical features, touch-tone, zone charges, long distance access (intrastate and interstate), the interstate Subscriber Line Charge, white page services, and the subsidy provided by Yellow Page Advertising; 2) The unseparated forward-looking costs of providing all services in the revenue benchmark should be included in the cost models. At a minimum, this consists of the costs associated with the entire loop and port, and reasonable allocations of the costs of switching, tandem switching, transport and software supporting the services in the revenue benchmark. These are discussed in detail below.

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[2] / Tenn. Code Ann. § 65-5-207 defines Universal Service as, "residential basic local exchange service." Therefore, the TRA finds that "...The following 'core' services shall be supported by the intrastate universal service fund: the primary access line consisting of dial tone, touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, access to 911 Emergency Services and educational discounts existing on June 6, 1995;" (Order at 53; discussion at 10-13).

I. Revenues Included in the Revenue Benchmark

When competitors provide service to residential customers in high cost areas, they will provide a number of services such as local service, long distance services, vertical features and the like, which together must cover costs. The revenue benchmark for universal service should take this into account by including the revenues from virtually all residential services. Moreover, the inclusion of revenues from a broad set of services captures the effects of any implicit subsidies supporting affordable rates for local service. This is essential for the identification of truly high cost areas, when local rates as well as the rates for additional services vary by location.

For these reasons the revenue benchmark should include the revenues for the following services: basic local service, toll, directory assistance, all vertical features, touch-tone, zone charges, long distance access (both interstate and intrastate), the interstate Subscriber Line Charge, and white page services (Order at 36-37). In addition, the subsidy provided by Yellow Page advertising also should be included. [3]/ The inclusion of Yellow Pages support helps minimize the size of the fund needed to support Universal Service. A small fund promotes market entry and competition, at least in the early stages of local competition, by keeping small the universal service funding burden imposed on new entrants. [4]/

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[3] / Both regulators and the courts have recognized the importance of Yellow Pages in keeping local rates affordable. In *United States v. AT&T*, 552 F. Supp. 131, 194 (USDC D.C. 1982), the Court stated, "All those who have studied the issue agree that Yellow Pages provide a significant subsidy to local telephone rates....The loss of this large subsidy would have important consequences for the rates for local telephone service."

[4] / Once competitors are firmly established in the state and start expressing an interest in serving high cost areas, the TRA may consider the removal of Yellow Pages support from the benchmark.

Including services in the revenue benchmark over and above the "core "services to receive Universal Service support is not inconsistent. To identify high cost areas requiring support, it is essential to examine the costs and the revenues from virtually all services. Any area for which these costs exceed the associated revenue benchmark is a higher cost area, perhaps eligible for support, than one in which the revenue benchmark exceeds the costs and support is not needed. If costs are not separated, then the cost of the loop, for example, is not allocated to individual services. This necessitates the inclusion of all service revenues which support the loop in the revenue benchmark. Furthermore, failure to include in the benchmark all the revenues that contribute to covering universal service costs may incorrectly identify some areas as needing support, when these areas may, in fact, depend relatively more heavily on the revenues from the excluded services to support affordable local service rates.

II. Costs Included in the Cost Models

The cost model is a common platform from which area- and/or company-specific data may be assessed. Thus, the cost model should be generic, reflecting the forward-looking, least cost technology of an efficient firm operating in the relevant geographic area. Costs should be developed on a combined basis, without regard to jurisdictional separations. Wherever possible, the cost factors and inputs should be area-specific with respect to geographic, topographic, and demographic characteristics, although not necessarily reflective of company-specific operating practices. The territorial scope and deaveraging capabilities of the cost model should be consistent with the area for which costs are examined. (Order at 40-41)

The cost model also should include the costs of all of the services in the revenue benchmark in order to correctly identify high cost areas (Order at 41). These costs include, at a minimum, the entire costs of the loop and port, and reasonable allocations of the costs of switching, tandem switching, transport, and software associated with the services in the revenue benchmark. Since local service rates may have been supported with various pricing strategies in the past, and these strategies may vary by geographic area, both the costs and revenues of all the relevant services must be captured. As with the revenue benchmark, failure of the cost model to include all of the relevant costs may lead to failure to identify some high cost areas. If some costs are missing, then the revenue benchmark may appear to exceed universal service costs in some areas when, were all the relevant costs captured, the costs would exceed the revenue benchmark.

Respectfully submitted,

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May 22, 1998

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 20, 1998

IN RE:	**UNIVERSAL SERVICE PROCEEDING**	**)** **)**	**DOCKET NO. 97-00888**

INTERIM ORDER ON PHASE I OF UNIVERSAL SERVICE

H. Lynn Greer, Jr.
Chairman

Sara Kyle
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INTERIM ORDER ON PHASE I OF UNIVERSAL SERVICE

This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Directors' Conference on February 3, 1998, to make findings of facts and conclusions of law on the issues in Phase I of this docket. The Universal Service docket was convened to establish an intrastate universal service funding mechanism pursuant to Tenn. Code Ann. § 65-5-207 (Universal Service), *47 U.S.C. § 214(e)(2)* of the *Communications Act of 1934, as amended,* the federal *Telecommunications Act of 1996* (the *"Telecom Act"*), and *Federal Communications Commission (FCC) Order 97-157, 12 FCC Rcd 8776 to 9616 (1997).* Phase I establishes the guidelines and defines the parameters for the other two phases of this docket. Phase II will identify the appropriate cost methodology and calculate the required intrastate support needed while Phase III will consider any necessary rate rebalancing. This is not a final Order, but shall be incorporated into any final Order as if fully rewritten therein.

I. BACKGROUND

In 1995, the Tennessee Legislature enacted the *Tennessee Telecommunications Competition Act* (the *"Tennessee Act"*), Section 1 of which became Tenn. Code Ann. § 65-4-123, and Section 18 of the *Act* became Tenn. Code Ann. § 65-5-207. Following the enactment of the *Tennessee Act*, the United States Congress passed the *Telecom Act* on February 8, 1996.[1] Both the *Tennessee Act* and the *Telecom Act* address the preservation of universal telephone service at affordable rates. The *Telecom Act* addresses universal service in § 254 by establishing a funding mechanism "to ensure access to telecommunications services for low-income, rural, insular and high cost areas at a price comparable to those in lower cost areas for similar

[1] The Telecommunications Act of 1996, Public Law 104-104, 104th Congress, February 8, 1996. 47 U.S.C. § 251 et. seq.

services."[2] The Tennessee Legislature addresses the preservation of universal service in Tenn. Code Ann. § 65-5-207(a) stating that "Universal service, consisting of residential basic local exchange telephone service at affordable rates and carrier-of-last-resort obligations must be maintained after the local telecommunications markets are opened to competition. In order to ensure the availability of affordable residential basic local exchange telephone service, the authority shall formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service."

Responsibility for implementing the interstate portion of Universal Service in the *Telecom Act* was delegated to the FCC by the United States Congress while responsibility for implementing the intrastate portion of Universal Service in the *Telecom Act* was delegated to the Authority in Tenn. Code Ann. § 65-5-207(a). On May 8, 1997, the FCC issued its *Report and Order, FCC Order No. 97-157*, which established "a plan that satisfies all of the statutory requirements, and puts into place a universal service support system that will be sustainable in an increasingly competitive marketplace."[3]

On October 21, 1997, after reviewing the comments received in response to the Hearing Officer's Notice of Proposed Schedule and Request for Comments and the legal and policy issues presented by the participants, the TRA approved separating the Universal Service proceeding into two (2) phases. On February 17, 1998, the Authority approved the addition of a third phase to this docket to address rate rebalancing. The issues to be addressed in Phase I were approved and adopted at a specially scheduled Directors' Conference held on October 30, 1997. Fifteen (15) issues, including subparts, were approved.

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2 FCC Order 97-157, 12 FCC Rcd 8780 (1997), ¶ 1.

3 FCC Order 97-157, supra note 2 (1997), ¶ 2.

The following Orders previously issued by the TRA are of significance in this proceeding: *Order Designating Eligible Telecommunications Carriers Pursuant to 47 U.S.C. § 214(e), the Telecommunications Act of 1996 Section 254 (C) and FCC Order 97-157,* attached hereto as Exhibit A; *Order Establishing Intrastate Discounts For Schools and Libraries Pursuant To Section 254(h) of the Telecommunications Act of 1996 and FCC Order 97-157,* attached hereto as Exhibit B; *Order Establishing Procedures for Lifeline Consents Pursuant to Section 214 (e) of the Telecommunications Act of 1996 and FCC Order 97-157,* attached hereto as Exhibit C; and *Order Establishing Procedures for Self-Certification of Rural Telephone Companies Pursuant to Section 153(37) of the Communications Act, As Amended, and FCC Order 97-157*, attached hereto as Exhibit D.

II. PARTIES TO THE PROCEEDING

At the second Pre-Hearing Conference held September 23, 1997, the Hearing Officer admitted the following entities as Parties with full rights of participation: AT&T Communications of the South Central States, Inc., BellSouth Cellular Corp., BellSouth Telecommunications, Inc., Ben Lomand Rural Telephone Cooperative, Citizens Local Exchange Carriers, Coalition of Small LECs and Cooperatives, Office of the Attorney General Consumer Advocate Division, DeKalb Telephone Cooperative, Inc., Electric Power Board of Chattanooga, GTE Mobilnet, MCI Telecommunications Corp., NEXTLINK Tennessee LLC, North Central Telephone Cooperative, Time Warner Communications of the Mid-South, Twin Lakes Telephone Co., United Telephone-Southeast and Sprint Communications L.P., West Kentucky Rural Telephone Cooperative Corp., Yorkville Telephone Cooperative, the Tennessee Municipal Telecommunications Group, and TCG MidSouth, Inc.

The following entities filed requests for permission to monitor the proceeding: Deltacom, Inc., Phoenix Network, Inc., Standard Communications Co., 360° Communications Company, WorldCom, Inc., AVR L.P. d/b/a Hyperion of TN L.P., LCI International Telecom Corp., TN Department of Finance and Administration, TN Department of Education and Charlene Taylor (Chaz Taylor, Inc.).

III. EXECUTIVE SUMMARY

This Order contains the TRA's findings in Phase I of the Universal Service funding proceeding which addresses the non-cost issues. Phase I specifically determines how Tennessee's intrastate USF should be structured for non-rural carriers. A digest of the TRA's findings is presented in this section. These findings are discussed by issue with specificity in Section IV of this Order.

The Authority first defines the parameters for determining the appropriate size of the intrastate USF, realizing that the size of the fund could have a significant impact upon competition. A fund that requires large contributions from telecommunications providers could discourage new entrants from doing business in Tennessee and encourage such companies to devote their resources to other states where Universal Service contributions are less. To the contrary, a fund that is too small could result in high cost areas not receiving the support needed to maintain "affordable" telephone services.

The Authority also concludes that the Tennessee intrastate USF will provide support to carriers serving customers in high cost areas, to carriers serving low income customers, and to carriers providing discounted educational lines to schools and libraries. Additionally, the Tennessee Relay Center and public interest payphones may eventually receive support from the Tennessee USF. The FCC's USF will provide similar support to cover the interstate needs of customers in high cost areas, low income customers, and educational lines to schools and libraries. The TRA's findings in Phase I of this proceeding are summarized below with more specificity following this section:

Support will not be based on the income level of the subscriber.

To promote competition and customer options, the Authority finds that support should be provided to residential subscribers in high cost areas regardless of the subscriber's income level. The Authority elects not to build affordability standards into the revenue benchmark as long as the benchmark is based on current rates.

Services to be made available by a carrier to receive intrastate USF support.

In order to receive intrastate Universal Service support, carriers must be designated by the Authority as an Eligible Telecommunications Carrier (ETCs). Each ETC will have certified service areas approved by the Authority. To receive this intrastate ETC designation, carriers will be required to make the following services available to all residential subscribers in the ETC's certified service areas: access line consisting of dial tone, touch-tone, and local calling area usage, toll blocking, access to E-911 services, access to directory assistance, access to interexchange carriers and access to operator services. Intrastate ETCs will also be required to offer Lifeline, Link-up and educational discounts consistent with Tenn. Code Ann. § 65-5-208(a)(1).

Intrastate ETCs are also required to advertise the availability of service and charges for service throughout their service areas. This is consistent with the provisions adopted by the FCC for the interstate USF.

Facilities requirements for intrastate ETCs.

The Authority finds that the facilities requirements for intrastate ETCs should be consistent with the FCC's facilities requirements. The FCC's requirements are compatible with the Authority's goal of providing Universal Service support to the carrier providing the facilities and not to a reseller of the service. Specifically, the Authority finds that, if an ETC provides supported services by reselling a service purchased at the wholesale discount, as determined in Docket 96-01331, *Avoidable Costs of Providing Bundled Services For Resale By Local Exchange Companies* (hereafter the "Avoidable Cost Docket"), such ETC will not be eligible for intrastate Universal Service support on that particular service. This approach ensures that the carrier incurring the cost of facilities will receive the support.

Intrastate support for primary residential lines.

The Authority finds that intrastate support will be provided only on primary residential lines and not on business or additional residential lines. Including only residential lines, and not business lines, is consistent with Tenn. Code Ann. § 65-5-207 that defines Universal Service as "residential basic local exchange telephone service."

Service areas are to be designated by wire center.

The Authority finds that service areas should be designated by wire center. Although the TRA recognizes that smaller support areas, such as CBGs, would better target universal support, it also generally recognizes that use of a CBG designation has inherent infirmities, such as identifying customers and costs, which would make this option difficult to implement and costly to administer. It is also clear that the *Communications Act, as amended,* 47 U.S.C. § 214, requires ETCs to offer the services supported by the USF "throughout the service area for which the designation is received." For purposes of this proceeding, implicit subsidy exists when, for a specific wire center, the forward-looking costs of providing the services included in the revenue benchmark exceed the revenues generated by the benchmark services.

Services to be included in the revenue benchmark.

The Authority finds that when competitors decide to provide service to residential customers in high cost areas, such competitors will offer a number of services to the customer (e.g., local service, long distance, vertical features, etc.). For this reason, the revenue benchmark used in calculating support for each wire center should be the average revenue per residential line for that wire center. Specifically, the revenues in the benchmark should include the following services: local service, intraLATA toll, directory assistance, all vertical features, touch-tone, zone charges, interstate and intrastate access charges, the interstate subscriber line charge, and white page services. The revenue benchmark should be calculated using the most current units and rates available at the time the benchmark study is prepared.

In addition, the subsidy currently being provided by Yellow Page advertising is to be included in the revenue benchmark. Since the divestiture of AT&T in 1984, both regulators and the courts have recognized the importance of Yellow Pages in keeping local rates affordable and maintaining universal service. The Authority finds that it is important at this time to continue recognizing the Yellow Page subsidy. The Authority also concludes that including Yellow Pages in the benchmark and thus maintaining a smaller fund, at least in the initial phases, best promotes market entry and a competitive market. Once competitors are firmly established in the state and begin to express an interest in serving high cost areas, the TRA may consider removing Yellow Pages from the benchmark.

The cost studies for each wire center should reflect the forward-looking costs of providing all of the services included in the revenue benchmark. This provides the proper matching of revenues and costs. If costs exceed the benchmark for the wire center, the difference, less any Federal support, will be funded through the intrastate USF. Costs should be calculated at the wire center level using a generic cost model including both company-specific inputs and generic inputs as determined in Phase II of this docket.

Methodologies and assumptions in calculating the cost of UNEs and Universal Service should be consistent.

Some competitors may provide Universal Service through the purchase of unbundled network elements (UNEs). In order to make Universal Service support potentially compensatory to such competitors, the Authority finds that the cost studies underlying the UNE rates and Universal Service support must be consistent. In order to compare the price of UNEs to Universal Service, it is necessary to have consistency in cost methodologies, (e.g., study areas and assumptions). The TRA also recognizes, however, that there are distinct issues to be addressed which may result in differences between the two studies on methodology, such as, but not limited to, inclusion of retail cost in Universal Service, but not in UNEs.

All providers should be required to contribute to the intrastate fund.

The Authority finds that, consistent with the *Telecom Act,* all providers of telecommunications services, regulated or not, will be required to contribute to the intrastate fund with the following two exceptions: 1) A temporary exemption from contribution will be provided for rural carriers and cooperatives as long as these carriers or cooperatives are not serving non-rural customers or have entered into an interconnection agreement to serve non-rural customers; and 2) a *de minimis* exemption will apply if a carrier's contribution to the intrastate USF is less than $1,000. It is initially believed that, in such instances, administrative cost of collection will outweigh the amounts collected.

The Authority also finds that intrastate telecommunications carriers should be defined consistent with Section 3(a)(49) of the *Communications Act, as amended.*

Support for schools and libraries and rural health care providers.

For the four services currently discounted to schools and libraries, the Authority finds that existing state discounts will be maintained and the federal pre-discount price will be no greater than the state discounted rate. The Authority also finds that current federal universal support is adequate for rural health care providers, and if it can later be demonstrated that the effectiveness of the federal plan is lacking, the TRA may revisit this issue.

IV. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

Testimony on the Phase I issues was presented by the Parties during a hearing (the "Hearing") held on December 8 and 9, 1997. Having heard the Parties' testimony, having reviewed pertinent portions of the record, and having fully considered the positions of the Parties, the TRA considered these matters at its February 3, 1998, Directors' Conference and unanimously made the following specific findings of fact and conclusions of law on the Phase I issues:

ISSUE 1: Services to be Supported by a Tennessee Universal Service Support System.

In considering the services to be supported by the intrastate USF, testimony was presented during the Hearing on services included in the FCC's definition of Universal Service as contained in the *Telecom Act,* and on State statutes relevant to Universal Service. The following issues were considered:

1a. **Does the TRA use state or Federal defined services?**

1b. **Should the intrastate USF provide support in addition to Federal mandated services?**

1c. **What are the Universal Service core elements?**

1d. **Does Tennessee Relay Center need to be addressed in this proceeding?**

1e. **Do public interest payphones, if determined to be necessary, need to be addressed in this proceeding?**

<u>Positions of the Parties</u>

Many of the parties comment that Federally defined services[4] should be used with the addition of Lifeline, Linkup, and educational discounts which were in place at the time Tenn.

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[4] Services in the Federal universal service definition include: single party service, voice grade access to the public switched network, DTMF signaling, access to 911, access to operator services, access to interexchange service, access to directory assistance, and toll control or toll blocking for qualifying low income consumers. FCC Order 97-157 ¶ 22.

Code Ann. § 65-5-208(a)(1) became effective. AT&T Communications of the South Central States, Inc. ("AT&T") argues that Lifeline and Linkup were not services as such, but were pricing mechanisms that should be continued. BellSouth Telecommunications, Inc. ("BST") and Sprint suggests that non-primary residential lines should be supported or identified as non-basic local service and exempt from regulation and subject to price changes. BST also argues that single line businesses should be supported if their cost is not covered by the current rate. AT&T, Citizens Local Exchange Carriers ("Citizens"), and NEXTLINK, Tennessee, LLC ("NEXTLINK") argues against support for non-primary residential lines and business lines on the basis that Tenn. Code Ann. § 65-5-207 clearly omitted business lines and that Tenn. Code Ann. § 65-5-208(a)(1) describes "an access line" in singular. The Coalition of Small LECs and Cooperatives (the "Coalition") argues that the network, not the individual residential or business access lines, should be supported since the network was not built to serve only a particular class of customer. The Consumer Advocate Division (the "CAD") comments that educational discounts in place at the time Tenn. Code Ann. § 65-5-208 was enacted are not basic residential services and do not meet the definition of Universal Service. Moreover, the CAD maintains that the Tennessee Relay Center ("TRC") should be included in this proceeding since it was a basic service at the time Tenn. Code Ann. § 65-5-208 was enacted. No other party supported the CAD's argument that the TRC should be addressed as part of this proceeding. State statutes are clear regarding what services should be supported by the intrastate USF. Tenn. Code Ann. § 65-5-207(a) states that: "Universal Service, consisting of residential basic local exchange telephone service at affordable rates and carrier-of-last resort obligations must be maintained after the local telecommunications markets are opened to competition."

Tenn. Code Ann. § 65-5-208(a)(1) goes on to define "basic local exchange telephone service" as: "telecommunications services which are comprised of an access line, dial tone, touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on June 6, 1995."

Consistent with these statutes, the Authority orders the following "core" services to be supported by the intrastate universal service fund: the primary access line consisting of dial tone, touch-tone and usage provided to the premises of a residential customer for the provision of two-way switched voice or data transmission over voice grade facilities, Lifeline, Link-Up Tennessee, access to 911 Emergency Services and educational discounts existing on June 6, 1995.

Support for business lines are excluded from the definition since those lines are excluded from the statutory definition in Tenn. Code Ann. § 65-5-207(a) for USF purposes only.[5] Also, intrastate support will only be provided on residential customers' primary (first) line and not additional lines. In establishing criteria for determining support, Congress stated in the Telecom Act that the FCC should consider the extent to which telecommunications service "have through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers."[6] The Authority concludes that this is also an appropriate criteria for intrastate universal service. At this time, the majority of residential customers have only one phone line.[7] Therefore, the Authority finds that support should only be provided on the primary residential lineat this time. The exclusion of the additional residential lines from the definition of Universal Service does not suggest that all residential lines are anything other than basic service and subject to existing law applicable thereto.

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[5] Tenn. Code Ann. § 65-5-207(a) states in pertinent part "universal service consisting of <u>residential basic local exchange service</u> at affordable rates."

[6] 47 U.S.C. § 254(c)(6)

[7] According to access line reports for February, 1998 submitted by BellSouth, only 11% of BellSouth's total residential access lines are additional lines.

The Authority also finds that Lifeline and Link-up services shall be funded though a separate, specific fund within the intrastate USF. This issue is discussed in further detail in Issue 10. The Authority further finds that neither the Tennessee Relay Center (TRC), nor public interest payphones should be addressed in this proceeding. Such issues are more appropriately addressed in separate proceedings where current and future needs, the criteria for determining such needs, and the cost of public interest payphones can be determined. Also, the costs of and the funding mechanism for the TRC can be examined in the same proceeding. If either the TRC or public interest payphones require support funding, such funding should be administered in conjunction with the USF.

ISSUES 2 & 3: Eligible Telecommunications Carriers.

In considering the criteria that a telecommunications carrier must meet to become eligible to receive intrastate Universal Service support, the Authority considered the required services to be offered, advertising requirements and facilities requirements for receiving intrastate support. Specifically, the following issues were considered:

2a. **How should the TRA address "exceptional circumstances"?**

3a. **What procedures will the TRA use for designating intrastate ETCs?**

3b. **Should those companies not under the TRA's authority be designated as an ETC?**

3c. **Should the TRA adopt the Federal advertising guidelines?**

3d. **Should the TRA adopt the Federal facilities requirements?**

3e. **Must a carrier participate in this proceeding to be eligible for designation as an ETC?**

3f. **What procedure is necessary to ensure that rural carriers satisfy notice of status requirements?**

Positions of the Parties

AT&T questions whether carriers who cannot provide one of the core services should be denied Universal Service support. AT&T recommends that such carriers be given the opportunity to request an exception and that such exception requests be handled on a case by case basis. The Coalition states that its members will not be able to provide toll limitation as the FCC has defined it and, in limited situations, they may not be able to provide E-911 or single party service. The Coalition suggests that the TRA should use the FCC provisions to define "exceptional circumstances."

The Parties agree that the FCC's eligibility requirements should be used for intrastate ETCs, but that exceptions should be allowed for a limited time for the inability of a carrier to provide single party service, E-911, and toll limitations. The Parties also agree that exceptions should be addressed on a case by case basis using the FCC's provisions. The Parties suggest that toll limitation be defined as either toll blocking or toll control. In its post Hearing brief, however, BST indicated that the FCC clarified in its December 30, 1997 Order on Reconsideration stating that the FCC no longer requires that an ETC offer both toll limitation and toll blocking. The FCC now allows ETCs to offer either toll blocking or toll limitation to satisfy ETC requirements. There was no cross-examination of this particular issue at the Hearing.

The Parties agree that any company seeking intrastate support and is willing to comply with TRA rules should be required to file a motion or petition for ETC status and that, at a minimum, the requirements of Section 214(e) of the *Communications Act, as amended,* should be met. The Parties also agree that participation in this proceeding should not be a requirement for ETC status. All of the Parties addressing the advertising requirements recommend that the advertising guidelines contained in the *Communications Act, as amended,* Section 214(e)(1)(b) are adequate. Most of the Parties recommend that the Authority increase the Federal facility requirements to be "meaningful" facilities. United Telephone-Southeast and Sprint Communications L.P. ("Sprint/UTSE") comment that the facility requirement should be meaningful facilities. The Coalition maintains that the FCC requirements should be adopted, but that "de minimis" facilities should not be considered to meet the requirements (e.g., operator services). The Coalition further argues that allowing resold services to meet the test will allow "cream skimming".[8] NEXTLINK argues that for resold services, the resellers, not the facilities provider, should be given the Universal Service support, while BST maintains that support should be provided to the underlying provider of the facilities. Time Warner Communications of

[8] Cream Skimming is the process of electing to serve only the most profitable customers.